

February 15, 2021

VIA ELECTRONIC FILING

Ms. Gabrielle Passidomo
Attorney, Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 20210012-TX – Application for limited designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (Auction 904) support for voice and broadband services and request for expedited consideration, by Hotwire Communications Ltd.

Dear Ms. Passidomo:

Thank you for your letter of February 11, 2021 seeking additional information regarding the petition filed by Hotwire Communications Ltd. (“Hotwire”) for designation as an eligible telecommunications carrier (“ETC”) or a statement that the Florida Public Service Commission (“Commission”) will not exercise authority in the matter.

Hotwire’s responses to your data request are as follows.

1. Does Hotwire provide switched access or interconnection service within the state of Florida?

No. Hotwire does not provide switched access or interconnection services to any customers in the state of Florida. Hotwire only provides broadband Internet, interconnected Voice over Internet Protocol (“VoIP”), and video services to residential and business customers.

2. Pursuant to the definition of “Telecommunications facility” provided by Section 364.02(14), F.S., please describe the real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within Florida.



Section 364.02(12), F.S., states that “[t]he term ‘service’ does not include broadband service or voice-over-Internet protocol service for purpose of regulation by the Commission.” For this reason, while Section 364.33, F.S., makes a certificate of authority necessary to provide “telecommunications services to the public,” the Commission does not require broadband Internet service or VoIP service providers to obtain a certificate. *See also* Chapter 25-4.003(4) (defining “Certificate of Authority” as “[c]ertificates received by all companies providing telecommunications services after July 1, 2011”). As such, because Hotwire does not provide a telecommunications “service” in Florida, it does not use or operate “telecommunications facilities” as that term is defined by the Florida Statutes.

Hotwire does, however, volunteer that it provides broadband Internet and interconnected VoIP over fiber-to-the-home facilities deployed in specific residential or business developments. Thus, most of the facilities owned by Hotwire consist of drop cables from neighborhood nodes to specific customer premises, deployed across private easements received from the development or customer. To carry traffic from these neighborhood deployments to its servers, Hotwire uses a mix of (i) Hotwire-owned fiber, (ii) indefeasible rights of use purchased from other fiber owners, and (iii) dark fiber leased from other fiber owners. Hotwire has access to public rights of way for deployment of its own facilities as a cable franchisee pursuant to its state franchise in the state of Florida. Accordingly, Hotwire’s broadband Internet and interconnected VoIP use public rights of way as services that are compatible with the provision of video services under Hotwire’s cable franchise.

3. On January 29, 2021, Hotwire requested cancellation of its telecommunications certification No. 8627, granted on May 22, 2006. Does Hotwire believe that a competitive local exchange company certificate of authority from the state of Florida is not required for ETC designation by the state of Florida? If yes, please indicate the Florida Statute and Rule that provides this authority.

Yes. The Florida Statutes explicitly exempt both broadband Internet and VoIP from the Commission’s jurisdiction. Section 364.011, F.S., states that “broadband services regardless of the provider, platform or protocol” and “VoIP” are both “exempt from oversight by the commission, except to the extent delineated in this chapter.” This exemption is also stated in Section 364.013, F.S. As noted above, Section 364.02(12), F.S., excludes broadband Internet and VoIP from the definition of “service,” thus exempting providers of such services from the requirement of obtaining a certificate of authority under Section 364.33, F.S.

Nor would such a requirement be consistent with the Commission’s precedent. In 2018, the Commission found that it did not have the authority to designate Viasat Carrier Services, Inc., a satellite company, as an ETC because Section 364.011, F.S., exempted wireless telecommunications from the Commission’s jurisdiction and oversight. *See Notice of Proposed Agency Action Order Dismissing Application for Designation as an Eligible Telecommunications Carrier*, Docket No. 20180180-TX, Order No. PSC-2018-0531-PAA-TX (issued Nov. 13, 2018) at 2-3. For the same reason, in 2020, Commission staff recommended that the Commission could not grant a commercial mobile radio services provider ETC status in Florida. *See Memorandum, Petition for Designation as an Eligible Telecommunications Carrier (ETC) in the*

State of Florida by TruConnect Communications, Inc., Docket No. 20-200147-TP, Document No. 03277-2020 (issued June 24, 2020) at 3. Neither the Commission nor Commission staff separately required either company to obtain a certificate authority from the Commission in order to operate as an ETC in Florida following FCC designation as such.

The Commission's jurisdiction is limited in the same way by the same statute with regard to providers of broadband Internet and VoIP like Hotwire. Accordingly, the same result should apply. Assuming the FCC eventually designates Hotwire as an ETC because Section 364.011, F.S., exempts broadband Internet and VoIP from the Commission's jurisdiction, the Commission cannot then separately require Hotwire to hold a certificate of authority to operate as an ETC in the state of Florida.

Notwithstanding that a certificate of authority is not required for Hotwire to operate as an ETC, Hotwire will comply with the requirements applicable to all ETCs operating in the state of Florida under Section 364.10, F.S., and Section 25-4.0665 of the Florida Administrative Code. Hotwire assumes that these requirements apply to all ETCs, whether they hold a certificate of authority or not.

Please do not hesitate to contact me if you have any questions regarding these responses, or need any other information.

Respectfully submitted,

HOTWIRE COMMUNICATIONS LTD.

By: /s/ Jeffrey J. Carlisle
Jeffrey J. Carlisle

Its Attorney